

FCC-96-216
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Section 257 Proceeding to
Identify and Eliminate
Market Entry Barriers
for Small Businesses

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) GN Docket No. 96-113

COMMENT OF THE NATIONAL BLACK CHAMBER OF COMMERCE, INC.
TO FCC NOTICE OF INQUIRY AS TO MARKET ENTRY BARRIERS
FOR SMALL BUSINESSES IN THE TELECOMMUNICATIONS INDUSTRY

COMES now the National Black Chamber of Commerce, by and through its counsel, and files the following as its comment to Notice of Inquiry, FCC96-216, GN Docket No. 96-113 (NOI).

1. The National Black Chamber of Commerce, Inc. ("NBCC") is a not for profit organization headquartered in Washington, D.C. NBCC's purpose is to advocate and advance the economic development of the African American community through promoting African American entrepreneurship. NBCC has over 114 affiliate chapters throughout the United States and represents a membership of over 25,000 black entrepreneurs.

2. In furtherance of its purpose, the NBCC has recently focused its attention on the telecommunications industry, as this industry represents the largest and fastest growing industry in America, and as such presents a substantial marketplace for black entrepreneurs.

3. Attached hereto as Exhibit 1 is a copy of the federal class action lawsuit filed by the NBCC against U.S. West, Inc. (the "Lawsuit"), which points out the discriminatory practices of U.S. West in denying contracts to African American businesses, notwithstanding their competitiveness in terms of qualifications and credentials.

4. The Lawsuit points out conduct on the part of U.S. West to deny business opportunities to black businesses which the NBCC believes is endemic to the industry and, therefore, pertinent to the issue of market entry barriers for small and minority businesses.

First, the racial disparity in contracting pointed out in the lawsuit (i. e. U. S. West contracts less than 1% of its billions of dollars of contracting opportunities with black businesses) provides evidence that race discrimination is a factor in the awarding of contracts by U.S. West and other such entities in the telecommunications industry. See City of Richmond v. J. A. Croson, 488 U. S. 469 (1989).

Second, the Lawsuit points to a pattern and practice of discrimination by U.S. West, which NBCC contends holds true for the telecommunications industry. Thus, the racism that poses a barrier to entry into the telecommunications market is systemic.

Third, the Lawsuit points to a trend of decreasing business opportunities being contracted by U.S. West with black owned businesses. NBCC contends that, as a result of the anti-affirmative action environment that exists, major telecommunications firms, such as U.S. West, only pay token service to governmental regulations requiring minority participation by companies participating in federal contracts. That tokenism is reflected by the companies placing minorities and women in positions

where they ostensibly have power to assist minority and women owned firms, but in fact have no real decision-making power. That tokenism is further reflected by the fact that bona fide minority firms are frequently denied access to contracting opportunities with companies, such as U.S. West, because the companies prefer to deal with illegitimate minority firms, known as "front companies."

Fourth, the Lawsuit points out the market barrier created by companies, such as U.S. West, through their eliminating competition by African American firms by utilizing other minority groups to meet governmental requirements for minority participation. Through relegating minority firms to competing with one another for only a small segment of their contracting opportunities, companies, such as U.S. West, are able to perpetuate their monopolistic dominance by keeping division among the smaller minority firms.

5. In the course of conducting its investigation of the discriminatory contracting practices of U.S. West, NBCC has obtained significant evidence of employment discrimination practices by the company. This employment discrimination, which appears to be prevalent in the industry, creates a barrier to entry into the marketplace, as employment provides the business knowledge and entrepreneurial acumen necessary to effectively own and maintain a business.

6. The practice of companies, such as U.S. West, to out-source contracts only to large firms causes African American and other minority firms to be subjected to predatory pricing by such firms that they compete against. Thus, notwithstanding their qualifications, black businesses are subjected to a competitive disadvantage.

7. The lack of governmental monitoring of companies, such as U.S. West, in a deregulated business environment has caused black businesses to be denied entry into the telecommunications market by virtue of the oligopoly of market power vested in these telecommunications companies.

WHEREFORE, the National Black Chamber of Commerce submits the following as its comment
for consideration by the Commission.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

NATIONAL BLACK CHAMBER OF)
COMMERCE, INC.; OJC TRANSFER)
AND DELIVERY SERVICE, INC.;)
1-A ROB MOVING, INC.; RELIABLE) Cause No. 96-D-1331
MAINTENANCE COMPANY; and)
PAS COMMUNICATIONS, on behalf of)
and as representatives for all African)
American business enterprises located in)
U.S. West Communications' 14-State Region)
Plaintiffs,)
) Jury Trial Demanded
v.)
U.S. WEST, INC.)
Defendant.)

PLAINTIFFS' FIRST AMENDED COMPLAINT

COME now plaintiffs National Black Chambers of Commerce, OJC Transfer and Delivery, Inc., 1-A Rob Moving, Inc., Reliable Maintenance Company, and Pas Communications, and for their cause of action against defendant U.S. West in this Count I, states the following:

Jurisdiction and Venue

1. Jurisdiction of this Court is invoked under the Fourteenth Amendment of the United States Constitution and Title 28 U.S.C. Sections 1331 and 1343 and Title 42 U.S.C. Section 1981.

2. Venue of this action is proper pursuant to Title 28 U.S.C. Section 1391.

The Parties

3. Plaintiff National Black Chamber of Commerce, Inc. ("NBCC") is and was at all times relevant herein a not for profit corporation organized and existing pursuant to the laws of the District of Columbia. NBCC is a membership organization, representing over 25,000 African American businesses throughout the nation, that exists for the purpose of empowering African American owned businesses through, among other things, advocacy of contracting opportunities for African American business enterprises with the private sector.

4. Plaintiff OJC Transfer & Delivery, Inc. ("OJC") is and was at all times hereinafter mentioned a corporation organized and existing under the laws of the State of Arizona. OJC is owned and operated by an African American citizen of the United States, and is a member of the NBCC.

5. Plaintiff 1-A Rob Moving, Inc. ("Rob Moving") is and was at all times hereinafter mentioned a corporation organized and existing under the laws of the State of Iowa. Rob Moving is owned and operated by an African American citizen of the United States, and is a member of the NBCC.

6. Plaintiff Reliable Maintenance Company ("Reliable") is and was at all times hereafter mentioned a corporation organized and existing under the laws of the State of Iowa. Reliable is owned and operated by an African American Citizen of the United States, and is a member of the NBCC.

7. Plaintiff Pas Communications ("PAS") is and was at all times hereafter mentioned a corporation organized and existing under the laws of the State of Kansas. PAS is owned and operated by an African American Citizen of the United States, and is a member of the NBCC

8. Defendant U.S. West, Inc. (hereinafter "U.S. West") is a corporation organized and existing under the laws of the State of Colorado. U.S. West is the sole shareholder in numerous subsidiaries, including Northwestern Bell Telephone Company, Mountain States Telephone and Telegraph Company, and Pacific Northwest Bell, providing service to a 14 State region in the United States.

Class Action Allegations

9. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, as amended, as a class action for its members and as a representative of and for and on behalf of all other persons similarly situated, to wit: all African American business enterprises located within the 14 State Region serviced by U.S. West which have sought contract opportunities with U. S. West and been denied such because of their race.

10. The class is so numerous that joinder of all or even a majority of the class members is impracticable if not impossible.

11. The prosecution of separate actions by the individual class members, even if possible, would create a risk of (a) inconsistent or varying adjudications with respect to individual class members against the defendant, which would establish incompatible standards of conduct for the defendant, or (b) adjudications with respect to individual class

members which would, as a practical matter, be dispositive of the interests of the other class members not parties to the adjudications or which would substantially impair or impede the ability of the class members to protect their interests.

12. There are substantial questions of law and fact common to the claims of the plaintiffs against the defendant and to the claim of each of the class members against the defendant. The questions of law governing and dispositive of plaintiffs' claims against defendant are precisely the same as the questions of law governing and dispositive of the claims against the defendant of each class member.

13. The claims of plaintiffs herein are typical, in all important respects, of the claims of each and all of the class members and are based upon and arise out of identical facts constituting the pattern of unlawful conduct of the defendant.

14. Plaintiffs will fairly and adequately protect the interests of the members of the class.

15. A class action is the most appropriate method for the fair and efficient adjudication of the matters alleged herein.

Defendant's Wrongdoing

16. OJC and Rob Moving are African American owned businesses that are involved in the delivery of goods. Reliable is an African American owned business that provides maintenance services, and Pas Communications is an African American owned firm that provides telecommunication services. U.S West annually contracts billions of dollars to

vendors such as plaintiffs OJC, Rob Moving, Reliable and PAS, which contracting is primarily carried out by U. S. West through one of its subsidiaries, U.S. West Business Resources, Inc.

Since at least 1994 and continuing to the present, OJC, Rob Moving, Reliable and PAS have sought and been denied the opportunity to enter into contracts with U.S. West to deliver goods, notwithstanding their qualifications and experience in the delivery business.

The denial of contracting opportunities to plaintiffs OJC, Rob Moving, Reliable and PAS is part of the pattern and practice of U.S. West to deny contracts to African American businesses.

According to a report recently filed with the General Services Administration, in fiscal year 1994, only 6% of U.S. West's subcontract dollars were spent by U.S. West with minority businesses; in 1995, only 3% of U.S. West's subcontracting dollars were spent with minority businesses; and presently, only 1% of U.S. West's subcontracting dollars are being spent with minority businesses.

Plaintiffs OJC, and Rob Moving, Reliable and PAS have been directly victimized by U.S. West's trend of denying and decreasing contract opportunities for African American businesses.

17. This exclusion of African Americans from contracting opportunities by U.S. West is part of the pattern and practice of U.S. West to intentionally discriminate against plaintiffs and other African American businesses on account of their race.

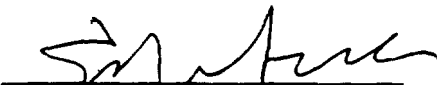
18. As a direct and proximate result of the aforesaid acts of the defendant, plaintiffs OJC, Rob Moving, Reliable, PAS and NBCC and its members have been discriminated against because of their race and been deprived of having and executing their rights and privileges under the Constitution and laws of the United States.

19. As a direct and proximate result of the aforesaid acts of the defendant, plaintiffs OJC, Rob Moving, Reliable and PAS have sustained damages, including loss of income and profits.

WHEREFORE, plaintiffs pray that this Court award actual damages against defendant U.S. West to plaintiffs OJC, Rob Moving, Reliable and PAS in the amount of \$10,000,000.00 each, and punitive damages in the amount of \$40,000,000.00, and grant plaintiffs such other and further relief as may be appropriate, including the award of attorney's fees.

Respectfully submitted,

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By 

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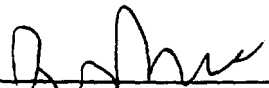
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